

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Louis & Sylvia Pernick :

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Years 1972, 1973. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of April, 1980, he served the within notice of Decision by certified mail upon Louis & Sylvia Pernick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis & Sylvia Pernick
800 N.E. 195th St.
No. Miami Beach, FL 33162
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of April, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Louis & Sylvia Pernick :
for Redetermination of a Deficiency or a Revision :
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Personal Income Tax :
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AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of April, 1980, he served the within notice of Decision by certified mail upon Milton Guttenplan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Milton Guttenplan
c/o Harry Abramowitz & Co.
855 Ave. of the Americas
New York, NY 10001

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
4th day of April, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

April 4, 1980

Louis & Sylvia Pernick
800 N.E. 195th St.
No. Miami Beach, FL 33162

Dear Mr. & Mrs. Pernick:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Milton Guttenplan
c/o Harry Abramowitz & Co.
855 Ave. of the Americas
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LOUIS and SYLVIA PERNICK : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1972 and 1973. :

Petitioners, Louis and Sylvia Pernick, 800 N. E. 195th Street, North Miami Beach, Florida 33162, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972 and 1973 (File No. 14606).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 8, 1979 at 10:45 A.M. Petitioners appeared by Milton Guttenplan, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the days on which petitioner Louis Pernick worked at his home in Florida constituted days worked without New York State for income allocation purposes.

FINDINGS OF FACT

1. Petitioners, Louis and Sylvia Pernick, timely filed a joint New York State income tax nonresident return for 1972 and 1973, on which salary income was allocated on the basis of the number of days worked within and without New York State.

2. On September 25, 1975, the Income Tax Bureau issued a Statement of Audit Changes on which it stated that:

- (a) Federal adjustments were made in accordance with section 659 of the Tax Law and that 20% of long-term capital gains were not added to Federal adjusted gross income, pursuant to section 612(b)(11) of the Tax Law. These adjustments were not challenged by petitioner.
- (b) Non working days were reduced by 4 days in 1972 and 10 days in 1973 in arriving at the total days worked in year. This adjustment was not challenged by petitioner.
- (c) Days worked at petitioners' home in Florida (18 days in 1972 and 21 days in 1973) were considered days worked within New York State for income allocation purposes. Petitioner contested said adjustment.

Accordingly, on March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency for 1972 and 1973 against Louis and Sylvia Pernick, asserting personal income tax of \$4,641.02, plus interest of \$815.39, for a total of \$5,456.41.

3. The returns filed by petitioners for the years at issue listed petitioner Louis Pernick's occupation as Sales Executive. The returns indicated that he worked in New York State 120 days in 1972 and 30 days in 1973.

4. Petitioner Louis Pernick received salary income during 1972 and 1973 from Joseph Pernick Co., Inc., Precision Knitting Accessories, Monarch Knitting Machinery Corp., Pernick Sales, Inc. (1973 only) and Monarch International LTD. No evidence was submitted as to the duties or nature of services rendered by petitioner on behalf of said firms. Each of the wage statements listed the employer's address as 74-10 88 St., Glendale, New York.

5. Petitioner contended that he maintained an office in his home where he conducted his selling and service activities and that said office in his home in Florida was necessary since the nearest office of his employers was in North Carolina.

CONCLUSIONS OF LAW

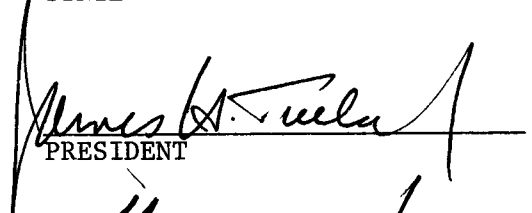
A. That petitioner Louis Pernick has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the days he worked at his home in Florida were worked there for the necessity and convenience of his employers rather than for his convenience. Therefore, the days he worked at home are not considered days worked outside New York State within the meaning and intent of section 632(c) of the Tax Law and 20 NYCRR 131.16.

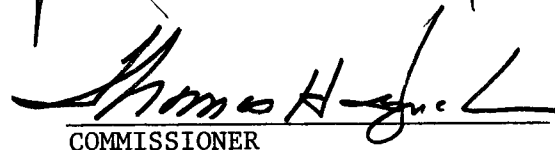
B. That the petition of Louis and Sylvia Pernick is denied and the Notice of Deficiency issued March 29, 1976 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

APR 4 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER